

Exhibit M

From: Lee, John [mailto:jlee@morganlewis.com]
Sent: Thursday, January 16, 2014 11:15 AM
To: Aubrey Smith
Cc: Matt Schmid; Sonja Nicole Spoo; Elizabeth St. Victor; Jenny Xie; Katie Lamm; Banks, Michael L.; Bouchard, Sarah E.; Robinson, Blair J.; Sullivan, Brian W.; Brooks, Justin S.
Subject: RE: Barghout/Bayer - updated privilege logs

Aubrey –

Yes, the pay equity studies withheld on privilege grounds are logged on the October 9, 2013 privilege log, and these studies are the ones prepared by the EEO group under the direction of counsel, as described on the logs.

W. John Lee

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From: Aubrey Smith [mailto:asmith@sanfordheisler.com]
Sent: Wednesday, January 15, 2014 7:53 PM
To: Lee, John
Cc: Matt Schmid; Sonja Nicole Spoo; Elizabeth St. Victor; Jenny Xie; Katie Lamm; Banks, Michael L.; Bouchard, Sarah E.; Robinson, Blair J.; Sullivan, Brian W.; Brooks, Justin S.
Subject: RE: Barghout/Bayer - updated privilege logs

Dear John,

Thank you for taking time to speak with me this afternoon. Based on our call, I understand that the “privileged pay equity studies” referenced in your January 14, 2014 email are reflected on the October 9, 2013 privilege log and that those studies were produced by the EEO group of the Shared Service Center. At this time, we do not have any additional questions on this topic. Based on our discussion about this privilege log, it appears that you are continuing to assert privilege over the promotion analyses also reflected in the same privilege log. If I have misunderstood your position,

please let me know.

Sincerely,

Aubrey

From: Lee, John [<mailto:jlee@morganlewis.com>]
Sent: Wednesday, January 15, 2014 1:58 PM
To: Aubrey Smith
Cc: Matt Schmid; Sonja Nicole Spoo; Elizabeth St. Victor; Jenny Xie; Katie Lamm; Banks, Michael L.; Bouchard, Sarah E.; Robinson, Blair J.; Sullivan, Brian W.; Brooks, Justin S.
Subject: RE: Barghout/Bayer - updated privilege logs

Aubrey –

Per our call, I understand that there was some confusion on your end regarding our privilege logs. We have had two distinct sets of privilege logs, one relating to documents withheld from the email discovery phase of the case (the BBE productions), which have all used the BBE-PRIV index, and one for other documents that used a different index. The updated privilege log we produced on January 7th was an update to the privilege log from our BBE productions series, as indicated by our use of the BBE-PRIV index for that log. Nowhere in my January 7th email did we indicate that this log somehow “superseded” the other privilege log for non-BBE documents.

During our December 17th and 20th calls, you indicated that Plaintiffs may have some additional questions regarding pay equity studies withheld on privilege grounds, and I asked you to send us those questions in writing. To date, we have not received those questions. You just called me a few minutes ago and raised some additional questions, many of which you based on your characterization of certain deposition testimony. Although we are happy to address any additional questions Plaintiffs may have, we ask that you provide the questions in writing, as we discussed previously, and if you want to refer to citations to deposition testimony that would be helpful.

Thanks,

W. John Lee

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From: Katie Lamm [<mailto:KLamm@sanfordheisler.com>]
Sent: Tuesday, January 14, 2014 6:37 PM
To: Lee, John
Cc: Matt Schmid; Aubrey Smith; Sonja Nicole Spoo; Elizabeth St. Victor; Jenny Xie
Subject: RE: Barghout/Bayer - updated privilege logs

John,

We were under the impression from your January 7 email ("Barghout/Bayer – updated privilege logs"), in which you said you were attaching "an updated privilege log," that your October 9, 2013 privilege log had been superseded. Although this log does not reference pay equity studies, we infer from your email today that entries 47-64 on that log pertain to pay equity studies over which Defendants are asserting privilege. Please confirm whether our understanding is correct.

Katherine E. Lamm

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Please note that our firm name and email addresses have changed.

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From: Lee, John [<mailto:jlee@morganlewis.com>]

Sent: Tuesday, January 14, 2014 5:36 PM

To: Katie Lamm

Cc: Banks, Michael L.; Bouchard, Sarah E.; Robinson, Blair J.; Sullivan, Brian W.; Brooks, Justin S.; Dellaratta, Denise M.; Loew, Rachel M.; Aubrey Smith; Matt Schmid; Jill Sanford; Katherine Kimpel; Jenny Xie; Elizabeth St. Victor; Sonja Nicole Spoo

Subject: RE: Barghout/Bayer - updated privilege logs

Katie –

Please see the privilege log we produced on October 9, 2013, which I referenced in my October 22, 2013 letter. We will respond to the remaining items in your December 9th email that have not yet been addressed by tomorrow.

W. John Lee

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From: Katie Lamm [<mailto:KLamm@sanfordheisler.com>]

Sent: Tuesday, January 14, 2014 5:29 PM

To: Lee, John

Cc: Banks, Michael L.; Bouchard, Sarah E.; Robinson, Blair J.; Sullivan, Brian W.; Brooks, Justin S.; Dellaratta, Denise M.; Loew, Rachel M.; Aubrey Smith; Matt Schmid; Jill Sanford; Katherine Kimpel; Jenny Xie; Elizabeth St. Victor; Sonja Nicole Spoo

Subject: RE: Barghout/Bayer - updated privilege logs

John,

Your email indicates that your privilege log identifies “relevant but privileged pay equity studies.” The privilege log references pay equity studies in describing the contents of emails that have been withheld, but it does not identify any actual pay equity studies that have been withheld. If any pay equity studies have been withheld on the basis of privilege, please promptly update your privilege log to indicate that with sufficient particularity for us to assess the claim of privilege.

Please also advise when we can expect your responses to the remaining questions I posed in my email on January 9, as well as the timing of your remaining data production.

Katherine E. Lamm

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From: Lee, John [<mailto:jlee@morganlewis.com>]

Sent: Tuesday, January 14, 2014 4:25 PM

To: Aubrey Smith; Matt Schmid; Katie Lamm; Jill Sanford; Katherine Kimpel

Cc: Banks, Michael L.; Bouchard, Sarah E.; Robinson, Blair J.; Sullivan, Brian W.; Brooks, Justin S.; Dellaratta, Denise M.; Loew, Rachel M.

Subject: RE: Barghout/Bayer - updated privilege logs

Aubrey –

As explained in my October 22, 2013 letter, Defendants have completed their production of relevant, non-privileged pay equity studies and provided a privilege log identifying relevant but privileged pay equity studies.

Defendants maintain that the document referenced at BBE-PRIV-009 is privileged under both the attorney-client privilege and attorney work product doctrine. BBE-PRIV-009 is an email chain between Dara Robifker, Sean Kolb-Hunt, William Klemick, Blair Robinson, and Sarah Bouchard requesting legal advice on whether and how to conduct a pay equity study for a particular employee population at Bayer, and counsel’s guidance on the same topic. The top level (latest in time) email in this chain reflects that Ms. Robifker forwarded this discussion to Michael Irons. BBE-PRIV-009 is unlike the other produced emails between Ms. Robifker and Mr. Irons because it contains emails

reflecting a request for and the provision of legal advice sent to and from both in-house and outside counsel to Bayer.

Finally, the attachment provides the original names of the files produced with the BBN bates prefix.

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From: Aubrey Smith [<mailto:asmith@sanfordheisler.com>]

Sent: Thursday, January 09, 2014 11:08 AM

To: Lee, John; Matt Schmid; Katie Lamm; Jill Sanford; Katherine Kimpel

Cc: Banks, Michael L.; Bouchard, Sarah E.; Robinson, Blair J.; Sullivan, Brian W.; Brooks, Justin S.; Dellaratta, Denise M.; Loew, Rachel M.

Subject: RE: Barghout/Bayer - updated privilege logs

John,

Thank you for your email on January 7, 2014 attaching Defendants' updated privilege logs. We ask that you confirm that all pay equity studies and related documents have now been produced or identified on a privilege log, as you indicated during our December 20, 2013 call.

To date, we have only received ten documents that we believe to be pay equity studies. BBN00027-36. Bayer's document production and deposition testimony, however, indicate that there should be many more pay equity studies. Specifically, Sean Kolb-Hunt, whom Bayer designated to testify regarding pay equity studies, stated that Bayer completes a pay equity study for each AAP site every twelve to twelve to fifteen months. Kolb-Hunt Dep. at 560:6-11. *See also* BBE00051196, Slides from BHC US HRBP Meeting, May 18, 2011 ("BHC aims to do an internal equity analysis of each AAP (site) every other year.") Further, Bayer's production indicates that Bayer Healthcare alone has fourteen AAP sites. BBE00066364, EEO 2012 ISO Audit, May 2013. Accordingly, we would anticipate that there exist more than 10 pay equity studies conducted between 2009 and the present.

Additionally, we note that although Bayer has now agreed to produce a number of emails related to pay equity studies which it originally withheld on the grounds that they constituted privileged communications to counsel William Klemick, Bayer continues to assert privilege over an email (BBE-PRIV-009) that appears to contain similar content. *Compare* BBE-PRIV-009 *with* BBE-PRIV-007 (an e-mail dated August 3, 2011, between Dara Robifker and Michael Irons described on Defendants' August 23, 2013 privilege log as an "E-mail related to pay equity study performed under direction of counsel William Klemick," but subsequently produced). Please confirm whether Defendants intend to assert privilege as to BBE-PRIV-009, and if so please describe how this document is distinguishable from those for which Bayer no longer asserts privilege.

Finally, none of the BBN series document production contain readily identifiable dates or titles. Please provide the metadata that was associated with each of these documents prior to their being processed for production.

Thank you,

Aubrey

From: Lee, John [<mailto:jlee@morganlewis.com>]

Sent: Tuesday, January 07, 2014 4:48 PM

To: Aubrey Smith; Matt Schmid; Katie Lamm; Jill Sanford; Katherine Kimpel

Cc: Banks, Michael L.; Bouchard, Sarah E.; Robinson, Blair J.; Sullivan, Brian W.; Brooks, Justin S.; Dellaratta, Denise M.; Loew, Rachel M.

Subject: Barghout/Bayer - updated privilege logs

Aubrey –

As discussed during our December 20th call, we have reviewed Defendants' privilege logs to determine whether any entries relating to pay equity studies should be removed or updated to reflect documents that were initially logged but subsequently have been produced to Plaintiffs. Set forth below is a list of any such privilege log entries and the corresponding bates number of the produced documents:

Priv Log #	BegProd	EndProd
BBE-PRIV-004	BBE00095128	BBE00095129
BBE-PRIV-005	BBE00095137	BBE00095138
BBE-PRIV-006	BBE00095145	BBE00095150
BBE-PRIV-007	BBE00095166	BBE00095168
BBE-PRIV-013	BBE00095126	BBE00095127
BBE-PRIV-014	BBE00135861	BBE00135864
BBE-PRIV-015	BBP024550	BBP024554*
BBE-PRIV-017	BBP024555	BBP024560*
BBE-PRIV-019	BBP024561	BBP024563*
BBE-PRIV-128	BBE00115434	BBE00115435

*These documents are attached to this email.

In addition, we are enclosing an updated privilege log that reflects the removal of these documents, as well as updated descriptions for BBE-PRIV-016, 039, and 131.

W. John Lee

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